

SOUTH CAROLINA,

Plaintiff,

vs.

No. 138

NORTH CAROLINA,

Defendant.

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TELEPHONIC CONFERENCE

BEFORE SPECIAL MASTER KRISTIN LINSLEY MYLES

Friday, October 24, 2008

Reported by:  
DANA M. FREED  
CSR No. 10602  
JOB No. 95212

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SOUTH CAROLINA,

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No. 138

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Telephonic Conference before Special  
Master Kristin Linsley Myles, beginning at 11:02 a.m.  
and ending at 11:19 a.m., on Friday, October 24, 2008,  
before DANA M. FREED, Certified Shorthand Reporter  
No. 10602.

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1 Friday, October 24, 2008

2 11:02 a.m. - 11:19 a.m.

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4 MR. GOLDSTEIN: This is Tom Goldstein for  
5 CRWSP.

6 MR. BROWNING: Chris Browning and  
7 Jennie Hauser for North Carolina.

8 MR. FREDERICK: David Frederick and  
9 Scott Attaway for South Carolina.

10 MR. COOK: Bob Cook, Childs Cantey, and  
11 Parkin Hunter for South Carolina.

12 MR. BANKS: For the City of Charlotte,  
13 Jim Banks, Parker Thomson, and Mike Boyd.

14 MS. SEITZ: For Duke Energy, Virginia  
15 Seitz.

16 SPECIAL MASTER MYLES: I think that means  
17 everybody's represented, unless I'm missing something.  
18 So why don't we proceed?

19 We received all of the status reports.  
20 I don't have any particular questions about any of  
21 them except the only question really is what the  
22 status is of getting the case management plan in  
23 place, whether that is something that can be done at  
24 this stage. And if so, when.

25 MR. FREDERICK: This is David Frederick,

1 Special Master Myles, for South Carolina. And we  
2 received the last set of comments from intervenors  
3 yesterday. I have been traveling. And I actually  
4 just returned to the office, after having a delayed  
5 return from Missouri, within the past hour. And  
6 I have communicated with the intervenors. We've taken  
7 a quick look at the changes. We will have agreement  
8 very shortly and expect that we would be able to  
9 confer with the State of North Carolina and  
10 intervenors early next week and present to you a joint  
11 submission. But I would appreciate the opportunity to  
12 have a little bit more time to proof it and to confer  
13 with clients in light of the travel situation I had  
14 today.

15 SPECIAL MASTER MYLES: Okay. That seems  
16 fine, unless anyone has any other comments on it.

17 What other issues do people have for today?

18 MR. GOLDSTEIN: Special Master Myles, this is  
19 Tom Goldstein. We have just a small point I'm hoping  
20 we can reach closure on, and it's the detail of the  
21 extent to which the intervenors --

22 (Interruption in proceedings.)

23 MR. GOLDSTEIN: -- the extent to which the  
24 intervenors will be served in the case. And if the  
25 few of the intervenors that both the rules provide, if

1 we bring in by analogy the civil rules, Rule 5. And  
2 also efficiency of the case, so that we just know  
3 what's going on and what discovery has been provided,  
4 that the intervenors should be served with papers in  
5 the case. And the discovery in the case.

6 I don't know if that's a controversial proposition  
7 anymore. But I just was hoping that we could reach  
8 closure on it, so that everybody would know the  
9 playing field.

10 SPECIAL MASTER MYLES: Why don't we ask the  
11 parties? The state parties. Is there any reason why  
12 that can't happen? We did touch upon this I think in  
13 the last call on this issue of service. At least we  
14 talked about service of documents. And is there any  
15 reason why that can't occur?

16 MR. FREDERICK: This is David Frederick for  
17 South Carolina. I thought that we had agreed to  
18 provide the CDs. Copies of CDs. And I think that  
19 maybe what was outstanding, and maybe this is what  
20 Mr. Goldstein was referring to, is I'm not sure there  
21 has been catchup done yet on prior matters. And we  
22 will attend to that.

23 Where there was a point of uncertainty and  
24 potential disagreement was whether large, voluminous  
25 paper documents needed to be reproduced. And I think



1 we left that issue open. Because at the present  
2 time --

3 MR. SHEEDY: Jim Sheedy and Susan Driscoll.

4 (Interruption in proceedings.)

5 MR. FREDERICK: This is David Frederick  
6 again. At the present time, we have been exchanging  
7 documents in electronic form.

8 MR. GOLDSTEIN: This is Tom Goldstein. It  
9 may be that we're all on the same page. I think the  
10 only concern of the intervenors is that if something  
11 is served that they get a copy of it. I don't  
12 think -- we are sensitive to questions of cost and  
13 efficiency.

14 DEPOSITION OFFICER: You were breaking up.

15 MR. GOLDSTEIN: Sorry. We're sensitive to  
16 concerns about cost and efficiency. And so I don't --  
17 if the point is us getting it by CD, rather than paper  
18 copy, I think we're perfectly fine with that.

19 At least I can say for CRWSP, just so long as we, we  
20 have it in one of those forms, that's our concern that  
21 there not be a gap of something that's a discovery  
22 response that gets provided and we never see it in any  
23 form. That's our only worry.

24 MR. FREDERICK: Special Master Myles, for  
25 South Carolina, we'll, we'll review what's been

1 produced. And we will arrange to send appropriate  
2 compact discs to catchup the intervenors.

3 SPECIAL MASTER MYLES: Okay. That's fine.  
4 That's good.

5 MR. GOLDSTEIN: Terrific. And we're very  
6 grateful.

7 SPECIAL MASTER MYLES: Are there any other  
8 issues that folks wants to raise today?

9 MR. BROWNING: Special Master Myles, this is  
10 Chris Browning. I just have a very minor  
11 administrative request. On the transcript from  
12 September 26th on page 41, lines 1 through 15, the  
13 transcript reflects that Mr. Frederick was speaking --  
14 I'm sorry, that Mr. Browning was speaking. And  
15 actually, during that portion of the transcript, it  
16 was Mr. Frederick who was speaking during that portion  
17 of the transcript.

18 I know it's very difficult for the  
19 court reporter when we don't identify ourselves. And  
20 I will certainly do my best in the future to make sure  
21 I do that every time that I speak. But I do want to  
22 make clear that on page 41, lines 1 through 15 were  
23 Mr. Frederick speaking at the time.

24 SPECIAL MASTER MYLES: Okay. Why don't we do  
25 this? Why don't we ask Mr. Frederick to look at that

1 page of the transcript, lines 1 through 15, to  
2 confirm that that was him speaking. If you can both  
3 agree on that, which it sounds like you probably can,  
4 then you can notify the court reporter. And the  
5 court reporter -- Dana, is it you today?

6 DEPOSITION OFFICER: Yes.

7 SPECIAL MASTER MYLES: You wouldn't have a  
8 problem from your standpoint changing that, would you?

9 DEPOSITION OFFICER: No, I do remember people  
10 weren't identifying themselves and struggling with  
11 that. That's fine.

12 SPECIAL MASTER MYLES: What's the best way  
13 for you to be notified of that change, if the parties  
14 can agree on it?

15 DEPOSITION OFFICER: Please call Irvine and  
16 they will let me know. The Sarnoff office in Irvine.

17 SPECIAL MASTER MYLES: Do you have that  
18 number available?

19 MR. BROWNING: We have got it on a  
20 transcript.

21 SPECIAL MASTER MYLES: Okay. Good. Then you  
22 all can take care of that.

23 MR. BROWNING: Thank you.

24 SPECIAL MASTER MYLES: Let us know what has  
25 been done and send a new copy of it. Once it's

1 corrected, we can upload that onto the website.

2 MR. FREDERICK: Special Master Myles, this is  
3 David Frederick. We have not sent any errata from  
4 I think the last two transcripts. But there have been  
5 some sent from a transcript, transcript or two earlier  
6 in the case. And we've just followed the practice of  
7 notifying the topics to counsel, when we have  
8 identified something that needs to be corrected. And  
9 I would propose that we do that going forward as well,  
10 so that we don't have to use time on these calls for  
11 this kind of administrative matter.

12 SPECIAL MASTER MYLES: What have you done,  
13 specifically? Have you notified the court reporter or  
14 just the parties?

15 MR. FREDERICK: The court reporter with  
16 copies to the parties. I think there was a correction  
17 from the Richmond hearing that we sent in. That I  
18 recall.

19 SPECIAL MASTER MYLES: Was it corrected?

20 MR. FREDERICK: That I don't recall.  
21 I believe that there was -- that the reporter did  
22 correct it. But I don't -- I have not looked up the  
23 file to confirm.

24 SPECIAL MASTER MYLES: Well, I think that  
25 it's probably best to err on the side of making

1 corrections where they're appropriate. But if we do  
2 that, doing so in the transcript so that it can be  
3 part of the official record. A corrected version.  
4 I know telephone conferences always have this problem.  
5 But I think we're better off trying to correct them  
6 where possible. Not every word, but especially if  
7 there's a speaker that's not correctly identified.  
8 I think it's better to try to correct these things as  
9 we go along.

10 So the procedure we just talked about for  
11 today's correction I think can be followed. Not to  
12 discuss them on the phone every time, I agree. But to  
13 confer with the parties. And then, if appropriate,  
14 notify the court reporter to create a new transcript  
15 and have it, have it sent to us to be uploaded.

16 Anything else? I have a couple of things I  
17 want to mention, but.... Is there anything else from  
18 the parties today? This can be a short call.

19 Just a couple of things, from my standpoint.  
20 I'll be getting the interim report out shortly. It  
21 needs to be printed and submitted to the Court, but  
22 I'm hoping to do that very shortly.

23 And it's also, as I mentioned before, a good  
24 time to put all of the -- to put in an application for  
25 fees. One thing that has held us up is trying to

1 figure out the best recommendation for allocating the  
2 fees among the various people. And I have a tentative  
3 allocation I'm going to tell you. And I'm not asking  
4 people to respond now, but I'm just going to put it  
5 out there. This is what I was planning to recommend  
6 to the Court, but I'm open to anybody having a  
7 different solution. It didn't seem fair to me to  
8 split the fees five ways. Nor did it seem fair to  
9 split the fees two ways. Meaning the two parties. So  
10 what I've tried to do is divide the world into  
11 intervention related activities and nonintervention  
12 related activities.

13 I think it's fair to say that most, quite a  
14 bit of my side has been spent on intervention related  
15 activities. I'm not sure the percentage. But to take  
16 the nonintervention, things that have nothing to do  
17 with intervention, and divide those in half. Half for  
18 North Carolina, half for South Carolina.

19 In so far as motions to intervene are  
20 concerned, and related activities, I would divide  
21 those in half. One half being shared equally by  
22 North Carolina and South Carolina. The other half  
23 being shared equally by the three intervenors.

24 So that's the proposed allocation I'd like to  
25 get your thoughts on, but it doesn't have to be at

1 this moment. People can write in, if they want time  
2 to analyze that proposal.

3 MS. SEITZ: This is Virginia Seitz for  
4 Duke Energy. Would you like to set a timeline for our  
5 written responses?

6 SPECIAL MASTER MYLES: How about next Friday?

7 MS. SEITZ: Again, Virginia Seitz. That's  
8 fine with Duke.

9 MR. FREDERICK: North Carolina. This is  
10 David Frederick. And that's fine for us, too.

11 MR. BROWNING: Your Honor, this is  
12 Chris Browning. North Carolina will submit something  
13 by next Friday as well.

14 MR. BANKS: This is Jim Banks for the City of  
15 Charlotte. We'll do the same.

16 MR. GOLDSTEIN: And Tom Goldstein for CRWSP.  
17 The same.

18 SPECIAL MASTER MYLES: Okay. Great. I did  
19 see that CRWSP and Duke did a joint progress report.  
20 If you want to do something like that, a joint report,  
21 that's fine, too. If somebody has the same opinion  
22 and wants to just put it in one letter, that's fine.  
23 I don't really care. I just wanted to say that's a  
24 fine format, from my standpoint.

25 I think that's all I had for today. Yeah,

1 that's all I had.

2 MR. FREDERICK: Special Master Myles, this is  
3 David Frederick. We have a call scheduled for  
4 December 5th, but I don't believe that we have  
5 anything scheduled for January. Do you want to work  
6 out a schedule now for January, or do you want --

7 SPECIAL MASTER MYLES: I think so, yes.  
8 Let's do that.

9 Next conference is December 5th. Right?

10 MR. BROWNING: Yes, Your Honor. This is  
11 Chris Browning.

12 SPECIAL MASTER MYLES: How about January 9th?

13 MR. BROWNING: Your Honor, this is Chris  
14 Browning again. January 9th works fine for the State  
15 of North Carolina.

16 MR. FREDERICK: David Frederick for  
17 South Carolina. That's fine for us as well.

18 MR. BANKS: Jim Banks for Charlotte.  
19 January 9th will work for us.

20 MS. SEITZ: Virginia Seitz, Duke Energy.  
21 That's fine with us.

22 MR. GOLDSTEIN: And Tom Goldstein for CRWSP.  
23 The same.

24 SPECIAL MASTER MYLES: Do you want to make it  
25 1:00 or 2:00 p.m. Eastern time? We have been sort of



1 going back and forth between those two times. I don't  
2 have a preference.

3 MR. FREDERICK: 2:00 would be easier for  
4 South Carolina.

5 SPECIAL MASTER MYLES: Any objections to  
6 that? Okay. So we'll proceed at 2:00 p.m. Eastern  
7 time on January 9th for the conference in January.

8 Is there anything else? Good. This was a  
9 quick conference. It will be good to get the case  
10 management order in place and move on from there.

11 MS. SEITZ: Thank you.

12 SPECIAL MASTER MYLES: Thank you.

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1 I, the undersigned, a Certified Shorthand  
2 Reporter of the State of California, do hereby  
3 certify:

4 That the foregoing proceedings were taken  
5 before me at the time and place herein set forth; that  
6 any witnesses in the foregoing proceedings, prior to  
7 testifying, were duly sworn; that a record of the  
8 proceedings was made by me using machine shorthand  
9 which was thereafter transcribed under my direction;  
10 that the foregoing transcript is a true record of the  
11 testimony given.

12 Further, that if the foregoing pertains to  
13 the original transcript of a deposition in a Federal  
14 Case, before completion of the proceedings, review of  
15 the transcript [ ] was [ ] was not requested.

16 I further certify that I am neither  
17 financially interested in the action nor a relative or  
18 employee of any attorney or party to this action.

19 IN WITNESS WHEREOF, I have this date  
20 subscribed my name.

21

22 Dated:

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